

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.853 OF 2006
IN
SUIT NO.3159 OF 1996

Kundan Sippy ...Plaintiff
Vs.
Orient Charters & Ors. ...Defendants

Mr.V.P.Vaze, Advocate for Plaintiff in support of
Notice of Motion
Mr.Anshuman Jagtap, Advocate i/b. N. Jagtap & Co. for
Defendant Nos.2 and 3 to show cause

CORAM: SMT. ROSHAN DALVI, J.
DATE : 18TH DECEMBER, 2006.

P.C.

1. The suit is filed by a Partner against the Partnership Firm and other partners for dissolution of the Firm of the First Defendants with effect from 26th July, 1996 and accounts.

2. The Plaintiff has sought the appointment of the Court Receiver and certain injunctions against creation of third party interest/rights in respect of the assets and properties of the dissolved firm.

3. Since the filing of the suit and the initial appointment of the Court Receiver the Plaintiff has taken out a number of Notices of Motion.

4. In the first of such Notice of Motion No.2593 of 1999 the Plaintiff sought payments to certain outstanding creditors, to the Government and Semi Government Authorities like income tax as well as tax, provident fund etc., to professionals attending to accounts, legal and taxation matters, to North Canara, GSB Co-operative Bank

for repayment of its loan, and to various third parties, the amounts specified against those parties. A detailed order for disbursement of funds came to be passed in that Notice of Motion on 21st November, 2000.

5. The Plaintiff took out another Notice of Motion No.468 of 2001 for withdrawal of Rs.36,550/-. Order came to be passed accordingly.

6. The Plaintiff took out yet another Notice of Motion No.831 of 2004 for payment of Rs.1,00,000/- to one Pankaj Jetli, Rs.3,00,000/- to one Purnima Jetli and Rs.3,00,000/- to Shashi Jetli. That Notice of Motion came to be withdrawn.

7. The Plaintiff took out yet another Notice of Motion No.3063 of 2004 for settlement of the claims of the above said Purnima, Pankaj and Shashi Jetli of Rs.8,00,000/-, MTNL bill, payment to 29 employees, payment to two of the Firm's partners, professional fees of M/s. R.S. Bapat Associates. M/s. Sakdev and Vaze Advocates and one "Co-ordinator" to the extent of Rs.417368/- Rs.6.20 Lakhs, Rs.8088/-, Rs.1,47,025/-, Rs.6,063/-, Rs.50,000/- and Rs.10,20,000/-. An order came to be passed as prayed upon Defendant No.4 consenting to such payment.

8. The Plaintiff has now taken out this 5th Notice of Motion for direction to the Court Receiver to pay the professional bill of D.M.Harish and Company for an amount of Rs.40,000/-towards income tax work, M/s. Bapat Associates of Rs.60,000/- towards fees and reimbursement

of expenses and M/s.Sakdev and Vaze Advocates for Rs.15,000/- towards legal advise and expenses.

9. This Notice of Motion is served by hand delivery on Defendants 1 and 2. Defendants 3 and 4 are represented by their Advocate. Defendant No.5 is the brother of Defendants 3 and 4 is stated to be served by registered post but the acknowledgment is not received. The learned Advocate for the Defendants 3 and 4 states that Defendants 3 and 4 have been declared insolvent. It is seen that after the filing of the suit and upon the order of appointment of Court Receiver, the Plaintiff has continuously taken out Notices of Motion for payments of large amounts to various third parties as well as for the fees stated to be rendered by various professionals without absolutely any particulars for making the payments to them. Payments to the extent of Rs.60,000/-, Rs.40,000/- and Rs.1,20,000/- have been earlier sought for by the Plaintiff and allowed by the Court for the professional services stated to be rendered by the professionals against seeking payments in this Notice of Motion. One M/s. R.S. Bapat and Associates is stated to a Company Secretary. He was allowed payments of Rs.60,000/- in N.M.No.3063 of 2004. The Plaintiff has applied for payment of Rs.60,000/- again to the same professional for "fees and reimbursement of expenses".

10. The particulars of services rendered by these professionals is not shown. What are the amounts for reimbursement is also not shown. Paragraph 4 of the affidavit in support shows that the firm of M/s. R.S. Bapat & Associates has rendered services as Co-ordinator

for handling the work of Co-ordination with one C.V.K. & Associates as a Consultant appointed by the Court Receiver. The handwritten material at the end of paragraph 4 shows that the reimbursement of expenses are those incurred after the last assignment of the work handled by them. It is not shown in the affidavit of the Plaintiff what are the particulars of the work carried out by M/s. R.S.Bapat Associates.

11. In Notice of Motion No.3063 of 2004 the Plaintiff sought for and obtained an order for payment of Rs.1,20,000/- to one K.K.Sippy, the son of the Plaintiff for letting out his office for storage of records for the use by the Co-Ordinator.

12. It is therefore, seen that the Plaintiff has sought payment to be made not only to the Co-Ordinator in a sum of Rs.60,000/- but to his son in a sum of Rs.1,20,000/- (which is double the fees of the Co-Ordinator himself !) for letting out the premises for storage of records.

13. The Plaintiff had applied for payment of Rs.60,000/- again to be made to M/s. R.S. Bapat Associates.

14. It is seen that in the earlier Notice of Motion the Plaintiff sought payment to his Advocate of Rs.50,000/- and again in this Notice of Motion has sought payment to his Advocate of Rs.15,000/-. No particulars of the work done or the advice given or the expenses incurred as stated by the Plaintiff is given.

15. The Plaintiff has further sought payment of Rs.40,000/- "for income tax work" to an income tax professional. It is not known what income tax is payable or paid by the first Defendant Firm or its partners. Paragraph 3 of the affidavit in support which seeks to detail the reasons for the payment shows the work done "relating to a proceeding before income tax appellate Tribunal" for which the bill of Rs.40,000/- is received. No particulars of the "proceeding" are given.

16. It is seen that after seeking to dissolve the Firm the Plaintiff has not applied for accounts to be made of the dissolved firm as per prayer (b). The Suit has been filed in 1996. For the last one decade the Plaintiff has taken out several Notices of Motion only for making payments of large amounts without particulars. The payment to be made specially to M/s. R.S. Bapat Associates who are stated to be a Firm of Company Secretaries is vague and left entirely unsubstantiated. It is sought to be made of very large extent. The payment is sought to be repeated after the last Notice of Motion. Particulars of the work done are not shown. It is not known what is "Co-Ordination work". It is not understood how a Company Secretary's service would be required by a Partnership Firm. The payment of double the amount of professional services to the son of the Plaintiff for merely letting out the premises is exorbitant. Taking out Notices of Motion, one after the another, for payment of large sums of money without absolutely any particulars in

the affidavit in support or without showing sufficient cause for such payment is the abuse of legal process. The Court Receiver appointed in the Suit is not required to continue to collect amounts and make payments over a number of years for the affairs of the firm sought to be dissolved.

17. The Defendants 3 and 4 are stated to have been declared insolvents. The Official Assignee would therefore, take over the profits and/or assets which would come to the share of Defendants 3 and 4 for making legitimate payments to genuine creditors. Seeking to make payments as sought by the Plaintiff would deplete the funds of the Firm sought to be dissolved. The entire exercise is an abuse of the legal process.

18. It is seen that the parties are largely related and agreeable to expand large sums of money ostensibly under various legitimate heads. It would do well for them to make up accounts and settle the suit itself. This is a fit case for settlement of the dispute by Mediation. The parties may appoint any Advocate for Business man to mediate in their dispute.

19. Since in this Notice of Motion no particulars are given for making any of the payments and the Plaintiff's act is repeated, the Notice of Motion is dismissed.

20. The Court Receiver shall not allow any further payments before obtaining directions from this Court.

(SMT. ROSHAN DALVI, J.)